

PLACEMENT AGENT AGREEMENT

This Placement Agent Agreement (“Agreement”) is made and entered into by and between City of Hercules, CA (the “Issuer”) and Hilltop Securities Inc. (“HilltopSecurities”).

WITNESSETH:

WHEREAS, the Issuer presently intends to issue indebtedness in the approximate amount of \$3,016,549.48 to refund the Issuer’s outstanding City of Hercules Assessment District No. 2005-1 (John Muir Parkway) 2005 Bonds with the Issuer’s designated Reassessment District No. 2005-1 (John Muir Parkway) Limited Obligation Improvement Bonds, Series 2019 (the “2019 Bonds”) and, in connection with the authorization, sale, issuance and delivery of such indebtedness, the Issuer desires to obtain the professional services of HilltopSecurities to serve as the placement agent for the 2019 Bonds; and

WHEREAS, HilltopSecurities is willing to provide its professional services and its facilities as placement agent, acting not as a fiduciary, in connection with the issuance of the 2019 Bonds.

NOW, THEREFORE, the Issuer and HilltopSecurities, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, do hereby agree as follows:

SECTION I DESCRIPTION OF SERVICES

Upon the request of an authorized representative of the Issuer, HilltopSecurities agrees to provide its professional services and its facilities as placement agent in connection with the issuance of the 2019 Bonds; and for having rendered such services, the Issuer agrees to pay to HilltopSecurities the compensation as provided in Section III hereof.

SECTION II TERM OF AGREEMENT

This Agreement shall become effective as of the date executed by the Issuer as set forth on the signature page hereof. Either party may terminate this agreement by providing ten (10) days’ notice to the other party; provided that the provisions of Section III shall not be affected by such termination.


SECTION III COMPENSATION AND EXPENSE REIMBURSEMENT

The fees due to HilltopSecurities for the services set forth and described in Section I of this Agreement with respect to the issuance of the 2019 Bonds during the term of this Agreement shall be calculated in accordance with the schedule set forth on Appendix A attached hereto. Unless specifically provided otherwise on Appendix A or in a separate written agreement between Issuer and HilltopSecurities, such fees, together with any other fees as may have been mutually agreed upon and all expenses for which HilltopSecurities is entitled to reimbursement, shall become due and payable concurrently with the delivery of the proceeds of the 2019 Bonds to the Issuer. HilltopSecurities has not received nor will it collect any compensation or other consideration from the buyer(s) of the 2019 Bonds.

SECTION IV MISCELLANEOUS

1. Choice of Law. This Agreement shall be construed and given effect in accordance with the laws of the State of California.
2. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Issuer and HilltopSecurities, their respective successors and assigns; provided however, neither party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party.
3. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this Agreement shall be of no force or effect except for a subsequent modification in writing signed by the parties hereto.
4. No Fiduciary Duty. The Issuer acknowledges and agrees that: (i) the transaction contemplated by this Agreement is an arm's length, commercial transaction between the Issuer and HilltopSecurities in which HilltopSecurities is not acting as a municipal advisor, financial advisor or fiduciary to the Issuer; (ii) HilltopSecurities has not assumed any advisory or fiduciary responsibility to the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto irrespective of whether HilltopSecurities or any of its affiliates has provided other services or is providing other services to the Issuer on other matters; (iii) the only obligations HilltopSecurities has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this Agreement; and (iv) the Issuer has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.
5. Indemnification and Hold Harmless. HilltopSecurities agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at HilltopSecurities sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of the performance of the HilltopSecurities, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the HilltopSecurities, its employees, and/or authorized subcontractors under this Agreement, whether or not the HilltopSecurities, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the HilltopSecurities shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or HilltopSecurities Proposal, which shall be of no force and effect. Notwithstanding any of the foregoing, HilltopSecurities' total liability and defense obligation to the Issuer shall not exceed the total amount of fees received pursuant to this Agreement.

HILLTOP SECURITIES INC.

By: 
Mike Cavanaugh
Managing Director

As of October 21, 2019

City of Hercules, CA

By: _____

Name: _____

Title: _____

Date: _____

\$3,026,549.48
City of Hercules, CA
2019 Bonds

APPENDIX A

The fees due HilltopSecurities for the 2019 Bonds will not exceed that listed below:

\$9,500

The Issuer shall be responsible for the following expenses, if any:

Bond Counsel fee and charges

Bank Counsel fee and charges

Disclosure Counsel fee and charges

Trustee or Escrow Bank

Municipal Advisor

Printing and distribution costs of documents

Cost of any required notices

Third party reports or providers such as an appraisal, title insurance, fiscal HilltopSecurities, assessment engineer or special tax HilltopSecurities.

HilltopSecurities will be responsible for our own travel expenses and our own legal fees. Our fee is entirely contingent on the successful completion of the 2019 Bonds. If the 2019 Bonds fails to close, we will not be reimbursed for any expenses.